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Date:
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Corp E	=
Corp F	=
State	=
Facility	=
Power Plant 1	=
Power Plant 2	=
Location 1	=
Location 2	=
Location 3	=
Location 4	=
Mine 1	=
Mine 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=

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Date 9	=
Year	=
<u>A</u>	=
<u>B</u>	=
<u>C</u>	=
<u>D</u>	=
<u>E</u>	=
<u>a</u>	=
<u>b</u>	=
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<u>g</u>	=
<u>h</u>	=
<u>i</u>	=
<u>j</u>	=
Process	=
Process A	=
Process B	=

Dear :

This is in response to your request for a ruling, submitted by your authorized representative on Date 7, concerning the federal income tax consequences of the transaction described below.

FACTS

Taxpayer Information

Taxpayer is a State limited liability company that is a wholly owned subsidiary of Corp A. Taxpayer was formed to lease and operate the Facility. Because Taxpayer has not elected to be classified as an association taxable as a corporation for federal income tax purposes, it is disregarded as an entity separate from Corp A for such purposes. Corp A, a State corporation, is wholly owned by Parent, a State corporation that is the common parent of a consolidated group of companies whose members include Corp A. Parent uses the accrual method of accounting and has adopted the calendar year as its annual accounting period.

The Refined Coal Production Process

A. The Facility

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Taxpayer has entered into an agreement to lease the Facility from Corp B for an initial term beginning on Date 5, and ending on Date 8, with an option to renew for one year terms with a final term ending on Date 9. Corp B is wholly owned by Corp C. The Facility was designed and constructed by Corp C to produce a refined coal product that reduces emissions of nitrous oxide (NO_x) and mercury (Hg) when burned as a fuel in a coal-fired power plant.

The Facility was placed in service in Year at the Power Plant 1 in Location 1, and owned by Corp D. After a period of negotiation, Corp D decided not to use refined coal at the Power Plant 1 and the Facility was relocated in Date 2 to the Power Plant 2 in Location 2. Except for the A, which had been configured to the specific requirements of the Power Plant 1 site, all of the major components of the Facility were removed from the Power Plant 1 site and installed at the Power Plant 2 site. The reassembly work at the Power Plant 2 site included a new A, new B and work on the C. The Power Plant 2, which is owned by Corp E, is a coal-fired and steam-producing power plant in regular commercial operation.

B. The Process

The technology employed to produce the refined coal in the Facility is known as the Process. It is a proprietary process which is designed to reduce NO_x and Hg emissions in cyclone coal-fired boilers. The rights to the technology are licensed by Corp F to Corp C, and have been sublicensed from Corp C to Taxpayer for the full term of the lease of Facility from Corp B.

The Process involves the use of two separate inorganic chemicals (Chemical Reagents) which are applied to locally mined D coal or a combination of D coal and E coal (coal feedstock). The first Chemical Reagent, referred to as Process A, is a solid material that mixes evenly with the coal's native ash in power plant boilers and affects the melting properties of the coal's native ash during combustion in power plant boilers. This allows adjustment of the air-fuel ratio in the boiler which reduces oxygen in the boiler and provides more favorable conditions for reduction of NO_x emissions. The second Chemical Reagent, referred to as Process B, is an inorganic liquid solution which reacts with the mercury in coal, resulting in changes to the chemical form of the mercury, oxidizing more of it. As a result, more of the mercury is captured with the fly-ash in the particulate control equipment, resulting in a higher degree of removal.

The Facility's equipment transports the Chemical Reagents to a coal conveyor belt, where they are applied evenly to the coal feedstock. The Chemical Reagents are combined with the coal at a rate proportional to the coal flow rate. The application of each Chemical Reagent is controlled separately by computer equipment which determines the rate of application based on the flow rate of the coal on the conveyor belt. The minimum proportion of each Chemical Reagent to be applied per ton of feedstock coal is set based on previously verified emissions test results. The amount of

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each Chemical Reagent applied per ton of feedstock coal may be increased above, but will not be decreased below, the per-ton amounts of such Chemical Reagents used to produce the refined coal used in the most recent determination or redetermination emissions testing.

C. Use of Blended Coal Feedstock

A majority of the coal burned in the Power Plant 2 is a percent D coal. However, the Power Plant 2 also burns blended coal feedstocks consisting of D coal and E coal (Blended Coal), generally in order to manage the sulfur dioxide (SO₂) emissions and the sodium content of the fuel burned in the Power Plant 2. The D coal burned in the Power Plant 2 is obtained from the Mine 1 in Location 3, and the E coal is obtained from the Mine 2 in Location 4. For the reasons described below, the percentage of D coal and the percentage of E coal in the Blended Coal may vary on a day-to-day basis.

In order to deliver refined coal which satisfies the Power Plant 2's specifications, Taxpayer intends to produce refined coal using both a percent D coal and Blended Coal composed of D coal and E coal obtained from the same mines that Corp E uses to obtain its coal. The percentage of D coal and E coal in the coal used as a feedstock at the Facility will vary as a result of two factors. First, Taxpayer may vary the composition of the coal feedstock to satisfy the differing needs of the Power Plant 2. Second, while the coal feeders will be set to feed D coal and E coal at a predetermined ratio, the feeders are not precision instruments and there will be some variation in the percentage of D coal and E coal in the Blended Coal in the short term. Nevertheless, the percentage of D coal and E coal in the coal feedstock used by Taxpayer to produce refined coal at the Facility will generally remain within a pre-determined range (Blend Range), but may vary outside the range for short periods of time due to coal availability and the operational requirements of the Power Plant 2.

Emissions Testing

A. Prior Emissions Testing

In Date 1, Corp C conducted full-scale emissions tests, using continuous emission monitoring system (CEMS) field testing at the Power Plant 1, using E coal feedstock and refined coal produced at the Facility from the E coal. Since the relocation of the Facility to Power Plant 2 in Date 2, three additional sets of full-scale emissions tests using CEMS field testing have been conducted. The first test, conducted in Date 3, was conducted using coal feedstock consisting of b percent D coal and c percent E coal, and refined coal produced at the Facility using the Process from the same coal feedstock. The second test, conducted in Date 4, was conducted using coal feedstock consisting of a percent D coal and refined coal produced at the Facility using the Process from the D coal feedstock. The third test, conducted in Date 6, was conducted using coal

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feedstock consisting of d percent D coal and e percent E coal, and refined coal produced at the Facility using the Process from the same coal feedstock.

Each emissions test were conducted in the following manner: To establish a baseline for NO_x and mercury emissions, one unit of the Power Plant 1 or the Power Plant 2 was operated for a three-hour period at or above d percent of full load using coal feedstock. The same unit was operated for a second three-hour period under the same operating conditions (except for adjustments to primary or secondary air in accordance with good air pollution control practices), using refined coal produced in the Facility using the Process from the coal feedstock and the Chemical Reagents, applied at a predetermined proportion.

During each baseline test and each test using refined coal, NO_x and mercury emissions were measured using CEMS equipment that conforms to applicable United States EPA standards. The NO_x CEMS devices were located upstream of post-combustion NO_x emissions controls. The mercury CEMS devices were located downstream of any SO₂ scrubber or mercury control device and downstream of the electrostatic precipitator (ESP), which controls particulate emissions. Each CEMS field test demonstrated a reduction in excess of f percent NO_x emissions and a reduction in excess of g percent of mercury emissions when burning refined coal produced in the Facility (excluding dilution caused by materials combined or added during the production process) when compared to emissions resulting from burning feedstock coal to produce the same amount of useful thermal energy.

The emission reductions demonstrated in each CEMS field test have been verified by an independent licensed professional engineer experienced in combustion and environmental engineering, as required by Notice 2010-54, 2010-40 I.R.B. 403 (Notice), including verification that the post-combustion NO_x controls, the scrubber, and the ESP, if any, were operated under the same conditions throughout the test period.

B. Emission Testing to Establish a Blend Range

Taxpayer anticipates that it will continue to use CEMS field testing to determine and redetermine the qualified emission reduction from burning refined coal produced in the Facility. Taxpayer will treat Blended Coals and a percent D coal it uses to produce refined coal as comparable coal of the same source and rank as the feedstock coal (either a percent D coal or a Blended Coal) used to conduct the most recent Determination Test (Test Coal) if the average percentage of D coal in the Blended Coal is within 5 percentage points of the percentage of D coal in the Test Coal (Blend Range). For example, if Taxpayer conducts emissions testing using Blended Coal consisting of b percent D coal and c percent E coal, feedstock coals containing between d percent and a percent D coal and between h percent and e percent E coal will be treated as comparable coals. Taxpayer anticipates that the coal feedstock it uses to produce refined coal will contain between h percent and i percent E coal. Therefore,

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Taxpayer expects to conduct two CEMS field tests every six months, one using Blended Coals containing d percent D coal and e percent E coal, and the other using either a percent D coal or Blended Coal containing c percent E coal, to establish a Blend Range of coals containing h percent to i percent E coal and a percent to j percent D coal. If Taxpayer decides to begin producing refined coal from Blended Coal that is outside the Blend Range, Taxpayer will conduct additional CEMS field testing.

In determining whether the percentage of D coal and E coal in the Blended Coal it uses to produce refined coal is within the Blend Range, Taxpayer will determine the average blend of the coal feedstock it uses to produce refined coal over a period of up to six months since the most recent determination tests or redetermination tests. If the percentage of D coal and E coal in the average blend over that period does not vary by more than 5 percentage points up or down (for a total of 10 percentage points) from the percentage of D coal and E coal in the Test Coal (either Test Coal if two tests were conducted), Taxpayer will treat the coal feedstock used during that period as coals of the same source and rank, and no redetermination testing will be required under the end of the six-month period. If Taxpayer conducts two determination tests, one determination test using a percent D coal (or Blended Coal containing b percent D coal and c percent E coal) and a second determination test consisting of d percent D coal and e percent E coal, the six-month average blend will be treated as comparable coal if it contains between h percent to i percent E coal and between a percent to j percent D coal.

C. Redetermination Testing

Taxpayer will conduct additional emissions tests using CEMS field testing or another method permitted by Notice 2010-54 or any subsequent applicable IRS guidance on or before the first to occur of: (i) the expiration of six months since the last determination or redetermination testing conducted using a Test Coal; or (ii) if the Process is changed; however, it does not intend to conduct redetermination testing before increasing the Chemical Reagent application rate. In addition, Taxpayer will conduct redetermination testing in the event of a change in the source or rank of the coal used to produce refined coal at the Facility or a change in the desired Blend Range.

RULINGS REQUESTED

Based on the foregoing, Taxpayer has requested that we rule as follows:

- 1) Refined coal produced at the Facility using the Process (as defined below) and the Chemical Reagents (as defined below) is “refined coal” within the meaning of section 45(c)(7) of the Internal Revenue Code of 1986, as amended (the “Code”), provided the refined coal (i) is sold to an unrelated person within the meaning of

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section 45(c)(7) and (ii) meets the emission reduction requirement of section 45(c)(7)(B).

- 2) An increase in the rate of application of a Chemical Reagent (as defined below) per ton of feedstock coal refined is not considered a “change in the process of producing refined coal from feedstock coal” for purposes of section 6.04 of Notice 2010-54, 2010-40 I.R.B. 403.
- 3) The lease of the Facility subsequent to its placed-in-service date will not affect the placed-in-service date of the Facility for purposes of section 45 and will not affect the determination of whether the producer of refined coal is eligible for production tax credits (“PTCs”) for refined coal produced at the Facility.
- 4) If the Facility was “placed in service” prior to January 1, 2012, within the meaning of section 45(d)(8)(B), a subsequent relocation and replacement of certain parts of the Facility in 2013, and any subsequent relocation or modification of the Facility, will not result in a new placed-in-service date for that Facility for purposes of section 45, provided the fair market value of the original property of the Facility is more than 20 percent of the Facility’s total fair market value at that time.
- 5) All feedstock coals with an average D coal content and E coal content of +/- 5 percentage points of the D coal content and E coal content of the Test Coal (as defined below) shall be treated as feedstock coals of the same source and rank as the Test Coal for purposes of section 6.04 of Notice 2010-54.
- 6) The redetermination requirement of section 6.04 of Notice 2010-54 may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than 10 percent below the bottom, or by more than 10 percent above the top, of the range of the sulfur content and range of the mercury content of the feedstock coal and the refined coal used in the most recent determination test or tests (as defined below) conducted pursuant to section 6.03 of Notice 2010-54.

LAW AND ANALYSIS

Section 45(a) of the Code generally provides a credit against federal income tax for the use of renewable or alternative resources to produce electricity or fuel for the generation of steam. Section 45(e)(8) provides that, in the case of a producer of “refined coal”, the credit available under § 45(a) for any taxable year shall be increased by an amount equal to \$4.375 per ton of qualified “refined coal” (i) produced by the taxpayer at a “refined coal production facility” during the 10-year period beginning on the date that the facility was originally placed in service, and which is (ii) sold by the taxpayer to an unrelated person during such 10-year period and such taxable year.

For purposes of § 45, section 3.01 of the Notice provides that the term "refined coal" means a fuel which -- (i) is a liquid, gaseous, or solid fuel (including feedstock coal mixed with an additive or additives) produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock, (ii) is sold by the taxpayer with the reasonable expectation that it will be used for purpose of producing steam, and (iii) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction. Section 45(c)(7) and section 3.04 of the Notice provide that the term "qualified emission reduction" means (1) in the case of refined coal produced at a facility placed in service after December 31, 2008, a reduction of at least twenty percent (20%) of the emissions of nitrogen oxide and at least 40% of the emissions of either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003; and (2) in the case of production at a facility placed in service before January 1, 2009, a reduction of at least 20 percent of the emissions of NO_x and at least 20 percent of the emissions of either SO₂ or Hg released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.

Section 45(d)(8) generally provides that the term "refined coal production facility" means a facility which is placed in service after October 22, 2004 and before January 1, 2012.

Section 5.01 of the Notice provides that the refined coal credit is allowed for qualified refined coal produced and sold to an unrelated person by the taxpayer, without regard to whether the taxpayer owns the refined coal production facility in which the refined coal is produced. Accordingly, a taxpayer that leases or operates a facility owned by another person may claim the credit for refined coal that the taxpayer produces in the facility.

Section 5.02 of the Notice provides that a refined coal production facility will not be considered to have been placed in service after October 22, 2004, if more than 20 percent of the total fair market value of the facility (the cost of the new property plus the value of the used property) is attributable to property that was placed in service on or before October 22, 2004.

Section 6.01 of the Notice generally provides that a qualified emissions reduction does not include any reduction attributable to mining processes or processes that would be treated as mining (as defined in § 613(c)(2), (3), (4)(A), (4)(C), or (4)(I)) if performed by the mine owner or operator. Accordingly, in determining whether a qualified emission reduction has been achieved, the emissions released when burning the

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refined coal must be compared to the emissions that would be released when burning the feedstock coal. Feedstock coal is the product resulting from processes that are treated as mining and are actually applied by a taxpayer in any part of the taxpayer's process of producing refined coal from coal.

Section 613(c)(5) describes treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or any necessary or incidental to a process provided for in § 613(c)(4). Any cleaning process, such as a process that uses ash separation, dewatering, scrubbing through a centrifugal pump, spiral concentration, gravity concentration, flotation, application of liquid hydrocarbons or alcohol to the surface of the fuel particles or to the feed slurry provided such cleaning does not change the physical or chemical structure of the coal, and drying to removed free water, provided such drying does not change the physical or chemical identity of the coal, will be considered as mining.

Section 6.03(1) of the Notice provides, in part, that emissions reduction may be determined using continuous emission monitoring system (CEMS) field testing. Section 6.03(1)(a) provides, in part, that CEMS field testing is testing that meets all the following requirements: (i) the boiler used to conduct the test is coal-fired and steam-producing and is of a size and type commonly used in commercial operations; (ii) emissions are measured using a CEMS; (iii) if EPA has promulgated a performance standard that applies at the time of the test to the pollutant emission being measured, the CEMS must conform to that standard; (iv) emissions for both the feedstock coal and the refined coal are measured at the same operating conditions and over a period of at least 3 hours during which the boiler is operating at a steady state at least 90 percent of full load; (v) a qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(b).

Section 6.03(2) of the Notice provides that methods other than CEMS field testing may be used to determine the emissions reduction. If a method other than CEMS field testing is used, the Service may require the taxpayer to provide additional proof that the emission reduction has been achieved. The permissible methods include (a) testing using a demonstration pilot-scale combustion furnace if it established that the method accurately measures the emission reduction that would be achieved in a boiler described in section 6.03(a)(a)(i) and a qualified individual verifies the test results in a manner that satisfies the requirements of section 6.03(1)(c)(i), (ii), (v), and (vi) of the Notice; and (b) a laboratory analysis of the feedstock coal and the refined coal that complies with a currently applicable EPA or ASTM standard and is permitted under section 6.03(2)(b)(i) or (ii) of the Notice.

Section 6.04(1) of the Notice provides that a taxpayer may establish that a qualified emission reduction determined under section 6.03 applies to production from a facility by a determination or redetermination that is valid at the time the production occurs. A determination or redetermination is valid for the period beginning on the date of the

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determination or redetermination and ending with the occurrence of the earliest of the following events: (i) the lapse of six months from the date of such determination or redetermination; (ii) a change in the source or rank of feedstock coal that occurs after the date of such determination; or (iii) a change in the process of producing refined coal from the feedstock coal that occurs after the date of such determination or redetermination.

Section 6.04(2) of the Notice provides that in the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under section 6.04 must use a method that meets the requirements of section 6.03. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that – (a) the sulfur (S) or mercury (Hg) content of the amount of refined coal necessary to produce an amount of useful energy has been reduced by at least 20 percent (40 percent, in the case of facilities placed in service after December 31, 2008) in comparison to the S or Hg content of the amount of feedstock coal necessary to produce the same amount of useful energy, excluding any dilution caused by materials combined or added during the production process; or (b) the S or Hg content of both the feedstock coal and the refined coal do not vary by more than 10 percent from the S and Hg content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of section 6.03 the Notice.

Section 6.05 of the Notice provides that the certification requirement of section 3.01(1)(c) is satisfied with respect to fuel for which the refined coal credit is claimed only if the taxpayer attached to its tax return on which the credit is claimed a certification that contains the following: (1) a statement that the fuel will result in a qualified emissions reduction when used in the production of steam; (2) a statement indicating whether CEMS field testing was used to determine the emissions reduction; (3) if CEMS field testing was not used to determine the emissions reduction, a description of the method used; (4) a statement that the emissions reduction was determined or redetermined within the six months preceding the production of the fuel and that there have been no changes in the source or rank of feedstock coal used or in the process of producing refined coal from the feedstock coal since the emissions reduction was determined or was most recently determined; and (5) a declaration signed by the taxpayer in the following form: “Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief, it is true, correct, and complete.”

Finally, § 45(d)(8) provides that a refined coal production facility must be placed in service within certain timeframes. For purposes of the refined coal credit allowable with respect to refined coal other than steel industry fuel, the facility must be placed in service after October 22, 2004 and before January 1, 2012. Section 3.07 of the Notice provides that the year in which property is placed in service is determined under the principles of § 1.46-3(d) of the regulations (*i.e.*, when the property is placed in a

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condition or state of readiness and availability for a specifically assigned function). Section 5.02 of the Notice provides that a refined coal production facility will not be treated as placed in service after October 22, 2004 if more than 20 percent of the facility's total value (the cost of the new property plus the value of the used property) is attributable to property placed in service on or before October 22, 2004. The Notice also states that the IRS will not issue private letter rulings relating to when a refined coal production facility has been placed in service.

With respect to the first two rulings requested, the Process involves blending coal with the Chemical Reagents in a cyclone coal-fired boiler. Section 6.01 of the Notice provides generally that a qualified emission reduction does not include any reduction attributable to mining processes or processes that would be treated as mining, as further defined in the Code, if performed by the mine owner or operator. Section 613(c)(5) describes certain treatment processes that are not considered as mining unless they are provided for in § 613(c)(4) or are necessary or incidental to a process provided for in § 613(c)(4). For example, § 6.01(2) provides, in part, that any cleaning process such as the application of liquid hydrocarbons or alcohol to the surface of the fuel particle or to the feed slurry, provided such cleaning does not change the physical or chemical structure of the coal, will be considered mining. In the instant case, the Process is not a mining process. Further, section 3.01 clarifies § 45(c)(7) and specifically provides that refined coal includes feedstock coal mixed with an additive or additives. Thus, additive processes which mix certain chemicals or other additives with the coal in order to achieve emission reductions may qualify for the production tax credit for refined coal. Accordingly, we conclude that (a) refined coal produced at the Facility using the Process and the Chemical Reagents is "refined coal" within the meaning of § 45(c)(7), provided the refined coal (i) is sold to an unrelated person within the meaning of § 45(c)(7) and (ii) meets the emission reduction requirement of § 45(c)(7)(B); and (b) an increase in the rate of application of a Chemical Reagent per ton of feedstock coal refined is not considered a "change in the process of producing refined coal from feedstock coal" for purposes of section 6.04 of the Notice.

With respect to the third ruling requested, the placed-in-service language in § 45(d)(8) focuses on the facility, and does not, by its terms, require the facility to have been placed in service by the taxpayer claiming the credit. Section 5.01 of the Notice provides that the refined coal credit is allowed for qualified refined coal produced and sold to an unrelated person by the taxpayer, without regard to whether the taxpayer owns the refined coal production facility in which the refined coal is produced. Therefore, a taxpayer that leases or operates a facility owned by another person may claim the credit for refined coal that the taxpayer produces in the facility. Accordingly, we conclude that the lease of the Facility subsequent to its placed-in-service date will not affect the placed-in-service date of the Facility for purposes of § 45 and will not affect the determination of whether the producer of refined coal is eligible for production tax credits for refined coal produced at the Facility.

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With respect to the fourth ruling requested, § 45(d)(8) generally provides that a “refined coal production facility” means a facility for the production of refined coal that was placed in service after October 22, 2004, and before January 1, 2012. Section 5.02 of the Notice provides that when a facility is placed in service is determined in accordance with § 1.46-3(d) of the regulations. In addition, section 5.02 provides that a refined coal production facility will not be considered to have been placed in service after October 22, 2004, if more than 20 percent of the total fair market value of the facility (the cost of the new property plus the value of the used property) is attributable to property that was placed in service on or before October 22, 2004. This rule provides a test for determining whether modifications to a facility will result in a new placed in service date. Accordingly, we conclude that if the Facility was “placed in service” prior to January 1, 2012 within the meaning of § 45(d)(8)(B), any subsequent modification or relocation of the Facility will not result in a new placed-in-service date for that Facility for purposes of § 45, provided the fair market value of the original property of the Facility is more than 20 percent of the Facility’s total fair market value at that time.

With respect to the fifth ruling requested, Taxpayer anticipates that it will continue to use CEMS field testing to determine and redetermine the qualified emission reduction from burning refined coal produced in the Facility. Taxpayer expects to conduct two CEMS field tests every six months, one using Blended Coals containing d percent D coal and e percent E coal, and the other using either a percent D coal or Blended Coal containing c percent E coal, to establish a Blend Range of coals containing h percent to i percent E coal and a percent to j percent D coal. Taxpayer will treat Blended Coals and a percent D coal it uses to produce refined coal as comparable coal of the same source and rank as the feedstock coal (either a percent D coal or a Blended Coal) used to conduct the most recent determination test if the percentage of D coal in the Blended Coal is within 5 percentage points of the percentage of D coal in the Test Blend (Blend Range). For example, if Taxpayer conducts emissions testing using Blended Coal containing b percent D coal and feedstock coals containing between d percent and a percent D coal and between h percent and e percent E coal will be treated as comparable coals. If Taxpayer decides to begin producing refined coal from Blended Coal that is outside the Test Blend Range, Taxpayer will conduct additional CEMS field testing.

Thus, provided that the average of the D coal content and the E coal content of the Blended Coal used to produce refined coal at the Facility remains within 5 percentage points above or below the percentage of D coal in a Test Blend over a period of up to six months since the most recent determination test or redetermination test, Taxpayer should not be required to conduct redetermination testing based on a change in the source or rank of the feedstock coal. In other words, if Taxpayer conducts CEMS field testing using refined coal produced from Blended Coal containing b percent D coal, it should not be required to conduct redetermination testing before the expiration of six months unless the D coal content of the Blended Coal is reduced below d percent. Accordingly, we conclude that all feedstock coals that are Blended Coals with a D coal

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content of +/-5% of the D coal content of a Test Blend shall be treated as feedstock coals of the same source and rank as the Test Blend for purposes of section 6.04 of the Notice regardless of the mine from which such feedstock is purchased.

With respect to the sixth ruling requested, section 6.04(2) of the Notice provides, in part, that in the case of a redetermination required because of a change in the process of producing refined coal from the feedstock coal, the redetermination required under section 6.04 must use a method that meets the requirements of section 6.03. In any other case, the redetermination requirement may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal do not vary by more than 10 percent from the sulfur and mercury content of the feedstock coal and refined coal used in the most recent redetermination that meets the requirements of the Notice. Accordingly, we conclude the redetermination requirement of section 6.04 of the Notice may be satisfied by laboratory analysis establishing that the sulfur and mercury content of both the feedstock coal and the refined coal, on average, do not vary by more than 10 percent below the bottom of (nor more than ten percent above the top of) the range of the sulfur and mercury content of the feedstock coal and refined coal used in the most recent determination that meets the requirements of section 6.03 of the Notice.

This ruling expresses no opinion regarding any issue not specifically addressed in this ruling letter, including (1) whether any person has sold refined coal to an unrelated person, or (2) when the facility was “placed in service.” In particular, we express or imply no opinion that Taxpayer has sufficient risk or rewards of the production activity to qualify as the producer of the refined coal. The Service may challenge an attempt to transfer the credit to a taxpayer who does not qualify as a producer, including transfers structured as partnerships, sales or leases that do not also transfer sufficient risks and rewards of the production activity.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. We are sending a copy of this letter ruling to the Industry Director.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel (Passthroughs
& Special Industries)